

US District Court - Delaware
In Re Federal Mogul - Chapter 11

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William Hanlon, Esquire

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1 "extraordinary claims."

2 I'm aware of what

3 "extraordinary claims" are, generally, under
4 these kinds of agreements.

5 But again, I didn't have a
6 very active role in negotiating those terms of
7 these agreements.

8 Q Is it correct that an extraordinary
9 claim would be one which was not subject to the
10 future claim values that were established in
11 these agreements?

12 A Well, you could have extraordinary
13 claims with respect to both present claims and
14 future claims.

15 Q Okay.

16 A But generally, extraordinary claims
17 were exceptions to the negotiated averages.

18 And plaintiffs were always
19 pushing for as many exceptions or extraordinary
20 claims as they could negotiate with respect to
21 both pending claims and future claims.

22 And the Center was always
23 pushing back for as few exceptions or as few
24 extraordinary claims, recognizing that that was
25 one of the issues that they'd have to reach

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1 agreement on.

2 Q In this particular agreement, on
3 page -283 and -284, it says that -- "The number
4 of such Extraordinary Claims shall be limited to
5 2% of Future Claims each year."

6 Do you recall that being a
7 typical number in SSP agreements for the number
8 of future extraordinary claims?

9 A I don't know that I'd use the term
10 "typical."

11 Generally, the numbers were
12 relatively small percentages or actually small
13 numbers of absolute claims.

14 As I said, the Center always
15 tried to keep that number, whether it was
16 expressed in terms of percentages or absolute
17 claims, as low as possible; and plaintiffs
18 always pushed back.

19 Q Do you recall whether there were
20 some agreements in which only mesothelioma
21 claims could be extraordinary claims?

22 A I don't recall specifically, but
23 that would not surprise me.

24 Q Were mesothelioma claims
25 generally -- was there a wider range, I guess --

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1 was there a wider range of -- were mesothelioma
2 claims considered to be the most -- were
3 mesothelioma claims considered to be the claims
4 of the highest value?

5 A By who?

6 Q By the CCR.

7 A I don't know how to answer that.

8 I mean, certainly, other
9 things being equal, mesothelioma was considered
10 to be a more serious disease, in terms of an
11 asbestos-related claim, than lung cancer or
12 other cancers or non-malignants.

13 But you could have, you know,
14 extraordinary cases, where, under the
15 circumstances of the particular case, a
16 non-malignant claim could be a more expensive
17 claim to settle than a mesothelioma claim.

18 MR. FRIEDMAN: I would ask you
19 to mark this as Exhibit 3.

20 This document is also
21 "Confidential," as designated by CCR.

22 (Whereupon, Hanlon Deposition
23 Exhibit No. 3 was marked for
24 identification.)

25 BY MR. FRIEDMAN:

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1 Q Mr. Hanlon, are you familiar with
2 this document?

3 A I'm not sure.

4 Q Okay.

5 A I don't -- I don't know for sure
6 whether I've ever seen this particular document
7 or not.

8 Q Was it typical to have a separate
9 agreement for future plaintiffs from present
10 plaintiffs?

11 A I think the Center did it both ways.

12 Q Do you know what the reasons were
13 for doing separate agreements were?

14 A I think it was really a function of
15 the particular negotiation.

16 I don't know of any particular
17 reason.

18 Q I ask you to turn to CCRFM000385.

19 Under Section 9, it says:

20 "Plaintiff Counsel have, for
21 many years, represented plaintiffs in connection
22 with their personal injury claims for
23 asbestos-related disease, and are highly
24 experienced in the asbestos litigation."

25 Was that a characteristic

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1 you'd say was generally true of the plaintiffs'
2 counsel with whom the CCR entered the SSP
3 settlements?

4 A Generally, the members of the
5 plaintiffs' bar with whom the Center was dealing
6 with in the late '90s had been in the business
7 for a long time, yes.

8 Q Wouldn't you say they were, by and
9 large, pretty sophisticated counsel?

10 A I don't see the word "sophisticated"
11 there.

12 Q I'm not asking whether it appears in
13 there. I'm asking for your assessment as -- in
14 your roles with CCR.

15 MR. FINCH: Object to form.

16 A It varied by plaintiff.
17 It depends on your definition
18 of "sophistication."

19 Q In the fourth line from the bottom,
20 it says:

21 "Plaintiff Counsel believe
22 that virtually all of their clients will accept
23 their recommendations."

24 And if you want to read the
25 whole paragraph, that's fine -- to understand

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1 what the "recommendations" refers to, obviously.

2 A No. I think I have a general
3 understanding.

4 Q Okay. Outside the context of this
5 particular agreement, did plaintiff counsel
6 represent to the CCR that they believed that
7 their clients would generally accept these
8 recommendations?

9 A I believe, based on what I heard
10 reported by the CCR claim staff, that these
11 representations were made by the plaintiffs that
12 had entered into these agreements, yes.

13 Q On page -382 in the paragraph above
14 4, "Payment of Claims..." -- well, I guess the
15 last paragraph of paragraph 3 -- it says:

16 In addition, in the event that
17 any current CCR member withdraws from the CCR or
18 has its membership in the CCR otherwise
19 terminated, plaintiff counsel and any such
20 departing CCR member company shall meet and
21 negotiate in good faith concerning a settlement
22 agreement with that company, governing future
23 claims that is consistent with this agreement.

24 Was that a provision that was
25 important to CCR members -- that if they

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1 departed, they would still be able to retain
2 benefits of the SSP agreement -- some of the
3 benefits of the SSP agreements?

4 MR. FINCH: Object to form.

5 A I'm not sure what you mean by
6 "important" or which members.

7 It was something that was
8 negotiated for their benefit.

9 The extent to which it was
10 considered important varied member to member. I
11 don't have a particular view as to how important
12 that was to any particular member.

13 Q Do you remember if that was a
14 provision that was -- that that concept in that
15 provision was introduced by CCR and its members
16 or by the plaintiff counsel?

17 A Oh, I suspect that that particular
18 provision was introduced by CCR, because it
19 provides some benefit to a departing CCR member.

20 And I don't think that
21 plaintiffs' counsel would have had any concern
22 about benefiting a member who left the CCR.

23 Q Was this a provision that the
24 general plaintiffs resisted including and was
25 difficult to negotiate?

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1 MR. FINCH: Objection; lack of
2 foundation.

3 A I don't recall any reporting or
4 discussion about this being particularly
5 difficult to negotiate.

6 It doesn't look like it's much
7 of an additional commitment on the part of
8 plaintiffs' counsel.

9 So I'm not surprised that
10 that's my recollection of those reports, but I
11 don't have any specific recollection of a
12 particular instance where a negotiation with a
13 particular plaintiff was reported in my
14 presence.

15 I'm sure most of the
16 plaintiffs' bar would always be prepared to
17 negotiate something in good faith.

18 MR. FRIEDMAN: Could I just
19 take five minutes to confer with Ms. King
20 -- Ms. Brown -- and we'll see if we have
21 additional questions?

22 THE WITNESS: Sure.

23 MR. WYNER: Sure.

24 (A recess was taken from 11:13
25 a.m. until 11:20 a.m.)

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1 MR. FINCH: Mr. Friedman, you
2 pass the witness?

3 MR. FRIEDMAN: Yes.

4 EXAMINATION BY COUNSEL FOR THE ASBESTOS
5 CLAIMANTS COMMITTEE

6 BY MR. FINCH:

7 Q Mr. Hanlon, my name is Nate Finch
8 and I represent the Asbestos Claimants Committee
9 in the Federal Mogul bankruptcy proceedings.

10 Sticking for the moment with
11 Hanlon Deposition Exhibit No. 2, this is an
12 example of a Strategic Settlement Program
13 settlement agreement; correct?

14 A I don't know what you mean by
15 "example." It is one of the settlements
16 negotiated as part of the SSP program.

17 Q As I read this agreement, before the
18 CCR will pay money to a claimant, the plaintiff
19 must submit evidence of exposure to the
20 asbestos-containing products of one or more CCR
21 members and evidence of an asbestos-related
22 disease.

23 Is that consistent with your
24 understanding of the settlement criteria in this
25 agreement?

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1 A That's consistent with my general
2 understanding of the SSP program.

3 I haven't looked at this
4 particular agreement; but, that was generally
5 true.

6 Q Were those two requirements --
7 namely, evidence of exposure to the
8 asbestos-containing products of one or more CCR
9 members and evidence of an asbestos-related
10 disease -- requirements in virtually all
11 settlement agreements with asbestos personal
12 injury plaintiffs, between the CCR member
13 companies and the plaintiffs?

14 A Yes, I believe so.

15 Q Can you explain for me why those two
16 requirements were the basis for the settlements?

17 A Well, I guess -- I think it's pretty
18 obvious:

19 The center wouldn't be under
20 any need to settle a claim if there wasn't a
21 basis for product identification against its
22 members.

23 It would be able to defend the
24 claim successfully on the basis of lack of
25 product ID.

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1 And similarly, what it was
2 attempting to do with these settlements was to
3 enter into settlements that would compensate
4 individuals for asbestos-related injury; and it
5 was trying to get some evidence of that injury
6 as a condition of the settlement.

7 It was not intending to
8 compensate people who were not injured by
9 asbestos.

10 Q Were those criteria, broadly
11 speaking, designed to track the standards a
12 plaintiff would have to meet in order to get
13 past a motion to dismiss or a motion for summary
14 judgment?

15 A No; I don't think I'd phrase it like
16 that.

17 Q How would you phrase it?

18 A I think they were entered into
19 against the litigation landscape, but they were
20 not designed to track anything.

21 They were negotiations that
22 took place in the tort system, subject to what
23 the tort system would do if the case were not
24 settled.

25 Q Okay. So they were designed to

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1 track how the law would treat the claims if they
2 were not settled?

3 A Again, I wouldn't buy your language
4 "track."

5 Q They were designed to "reflect"?

6 A No. They were negotiated in the
7 context of the tort system -- based on the
8 realities of the tort system, the particular
9 jurisdiction, the particular plaintiffs'
10 counsel, the particular claimants.

11 But they weren't meant to
12 "track" or "reflect" anything.

13 Q The settlement amounts set forth in
14 Exhibit 2, on page -272 --

15 A The ones that are redacted out.

16 Q Yes.

17 -- those were the settlement
18 amounts that were paid to the plaintiffs
19 pursuant to this agreement that would resolve
20 the plaintiffs' claim against all the CCR
21 members; correct?

22 A Again, I don't know -- I mean, that
23 was generally true of the SSP agreements. I
24 don't know about this particular agreement.

25 But generally, the Center

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1 always settled a case on behalf of its
2 then-existing members.

3 Q Right.

4 And it wouldn't tell the
5 plaintiff lawyers, who were negotiating the
6 claims, how much each CCR member contributed to
7 the overall aggregate settlement amount in the
8 agreement, would it?

9 A No, it would not.

10 Q Okay. So for example, if the
11 mesothelioma amount here was \$500,000, the CCR
12 would never tell the plaintiff lawyers, "Well,
13 of that \$500,000, Turner & Newall's share of
14 that was 20 percent" -- or anything like that,
15 would it?

16 A Not in the negotiation process.

17 In the short-payment
18 litigation, as claims were shortened, the Center
19 did routinely advise plaintiffs' counsel and
20 plaintiffs of the share of the company who was
21 not paying its share.

22 The Center did routinely
23 advise plaintiffs' counsel and their claimants
24 of the share of the company that was not paying
25 its share.

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1 Q And the short-payment litigation
2 occurred after February 2001; is that correct?

3 A No. My recollection -- but I'd be
4 happy to take some counsel from my counsel --
5 was that it began after GAF membership was
6 terminated in the Center, effective January of
7 2000.

8 So I think the short-payment
9 litigation began --

10 Q Early in 2000?

11 A -- something in, like, March 2000,
12 yes.

13 Q But as part of negotiating the
14 values of the cases, the plaintiffs certainly
15 wouldn't be told what the liability share was
16 for each CCR member?

17 A No, they couldn't be, because the
18 shares of the members depended, in part, on the
19 occupation of the claimant; and that information
20 would not be known, systematically, until those
21 claims were actually processed and qualified.

22 Q Okay.

23 A So, you couldn't determine the
24 shares in advance.

25 Q Turning to page 14 of Exhibit 2,

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1 Mr. Friedman took you through the
2 provision where it states that -- "...Plaintiff
3 Counsel agree to negotiate in good faith with
4 the CCR and its then member companies..."

5 Do you see that?

6 A Um-hum -- yes.

7 Q Is it correct that what the
8 plaintiff lawyers obligated themselves to do was
9 to negotiate with the remaining CCR members and
10 any current member that left the CCR on
11 compensation amounts for future claims -- but
12 they did not agree to any particular amounts for
13 the companies that left the CCR, did they?

14 A I think I basically agree with what
15 you're saying, yes.

16 Q So for example, if the overall
17 settlement average for all the CCR members at
18 the time Exhibit Hanlon 2 was entered into was
19 for \$500,000 for mesothelioma, the plaintiff
20 lawyers didn't obligate themselves to any
21 particular amount to recommend in settlement
22 negotiations with Turner & Newall if Turner &
23 Newall subsequently left the CCR, did they?

24 A No.

25 Q "No," they didn't obligate

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1 themselves to do that?

2 A "No," they did not obligate
3 themselves to do that.

4 Q I take it that you have not compared
5 the average settlement amounts for Turner &
6 Newall post CCR to what they're paying within
7 the CCR, have you?

8 A I don't know that I've ever seen
9 information for Federal Mogul entity settlements
10 after they left the CCR.

11 Q Okay. During the time that the CCR
12 was handling claims on behalf of its members,
13 who was the person that was principally
14 responsible for negotiating the exposure and
15 medical criteria in the settlement agreements?

16 A I think that varied from agreement
17 to agreement.

18 You know, there was a director
19 of claims; and there was also a chief operating
20 officer and a CEO.

21 And everything took
22 direction -- everyone took direction,
23 ultimately, from the board of directors.

24 I think the person most
25 responsible for supervising the settlements that

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1 took place were with Michael Rooney for the bulk
2 of that time.

3 But Michael Rooney resigned
4 from the Center at some point in the early
5 2000s. So after he left, it would have probably
6 been Dan Myer -- so, different people at
7 different points in time.

8 And some of these issues were
9 also delegated down to individual claims
10 analysts for particular negotiations.

11 Q Turning to Appendix C of Exhibit 2,
12 page -296 of the settlement agreement --

13 A Yes.

14 Q -- paragraph 2(a)(1) recites that a
15 plaintiff can prove exposure by demonstrating
16 his presence at an "agreed-upon jobsite during
17 an agreed-upon exposure period."

18 What was an "agreed-upon
19 jobsite" and an "agreed-upon exposure period"?

20 A Well, generally, these were, in
21 particular cases, job sites and exposure periods
22 under which the CCR would agree with the
23 plaintiffs' counsel that one or more of the CCR
24 members had products that were in use at that
25 job site at that time.

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1 So that if the claimant
2 established that he worked at that job site
3 during that period of time, the CCR would not
4 contest that there was sufficient evidence of
5 product identification to justify compensation
6 under the settlement.

7 Q Then it goes on to say that the
8 plaintiff can demonstrate exposure to the
9 asbestos-containing product at one or more
10 members of CCR by providing an affidavit or
11 deposition testimony or coworker affidavits.

12 Do you see that?

13 A I do see it, yes.

14 Q Is that type of evidence frequently
15 accepted by the CCR as proof of exposure?

16 MR. FRIEDMAN: Object to form.

17 A Yes, I believe it was.

18 Q And then it lists other evidence
19 acceptable to the CCR to demonstrate exposure to
20 one or more CCR members' asbestos-containing
21 products or to establish exposure at a site
22 where one or more CCR members'
23 asbestos-containing products were regularly
24 used.

25 What type of other evidence

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1 was acceptable to the CCR to demonstrate product
2 ID?

3 A I don't have anything particular in
4 mind. I'm sure there are a number of
5 possibilities.

6 One that occurs to me, just
7 looking at this, could be live testimony in a
8 court case, for example; but I think this is
9 really a catchall to -- to --

10 Q Could it include things like
11 interrogatory answers or answers to request for
12 submissions from prior cases?

13 A I suppose it could. I don't know
14 for sure, but I suppose it could.

15 Q Could it include things like
16 invoices, showing asbestos-containing products
17 shipped to a particular place?

18 A Potentially, it could.

19 Q Could it include testimony from
20 other lawsuits involving CCR members, prior
21 testimony?

22 MR. FRIEDMAN: Objection to
23 form.

24 A Potentially, I suppose it could.

25 Q The next page, -297 --

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1 Or actually, I have a
2 question:

3 Were the product
4 identification and exposure criteria set forth
5 in this particular agreement similar in nature
6 to the product identification and exposure
7 criteria set forth in other CCR group settlement
8 agreements?

9 A I suspect so, but I haven't compared
10 them recently.

11 Q Turning to page -297, it states:

12 "A Plaintiff will be deemed to
13 have satisfied these product exposure
14 requirements if he or she establishes, by
15 affidavit or comparably reliable evidence, that
16 he or she had regular occupational exposure for
17 a period of at least one year (three months in
18 mesothelioma cases) during a period when
19 products supplied by one or more CCR members
20 were used at that work site."

21 Why was there a requirement of
22 showing regular occupational exposure for a
23 period of at least one year, for everything
24 other than mesothelioma cases?

25 A I think it was a negotiated term to

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1 reflect sufficient occupational exposure to meet
2 a certain level of reasonable causation.

3 Q And why was the period of time for
4 mesothelioma lower than for other
5 asbestos-related diseases?

6 A I think the epidemiological evidence
7 over which litigation occurs suggests that the
8 amount of exposure to establish causation for
9 mesothelioma is less than it is for the other
10 diseases that are subject to the settlement.

11 Q In the next paragraph, it states
12 that -- "In addition, Plaintiff Counsel must, in
13 good faith, attempt to submit evidence
14 concerning Plaintiff's exposure to every CCR
15 member's asbestos-containing products to which
16 Plaintiff claims exposure, or to which other
17 evidence available to Plaintiffs' Counsel
18 indicates Plaintiff was exposed."

19 Why was that a requirement in
20 this settlement agreement?

21 A Generally, this information was
22 relevant to the CCR for purposes of share
23 allocation.

24 MR. FINCH: Okay. Well, let's
25 talk about the share-allocation process.

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1 Let's mark this as the next
2 document.

3 (Whereupon, Hanlon Deposition
4 Exhibit No. 4 was marked for
5 identification.)

6 BY MR. FINCH:

7 Q Mr. Hanlon, do you recognize Hanlon
8 Deposition Exhibit 4?

9 A Yes.

10 Q What is it?

11 A I believe it is a document that was
12 prepared in response to information requests,
13 that was related to this deposition.

14 Q Just going through the columns:
15 "All CCR Claim Count" -- does that refer to the
16 number of claims filed against all CCR members
17 in a given period of time?

18 A Well, we're starting with a
19 population of billed claims.

20 For those billed claims, the
21 claims are broken down by the settlement month,
22 the month in which the CCR settled them.

23 And the total claim count is
24 the total number of claims that were settled by
25 the CCR on behalf of all the CCR members, yes.

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1 Q Okay. So the billed claims would be
2 the number of claims that CCR paid money to a
3 plaintiff; is that right?

4 A Not necessarily.

5 By billed claims it means
6 billed to the CCR member. So these are the
7 claims that the Center billed to its members.

8 Q Okay. And so, for example, in the
9 eighth month of 1998, CCR billed to all of its
10 members 24,551 claims.

11 And of that amount, Turner &
12 Newall paid a share of 9,637 of them?

13 Am I reading that information
14 correctly?

15 A No.

16 Q Okay. Can you explain how this
17 works?

18 A I think you said that the Center
19 billed 24,000 claims in that month; and that's
20 not what this reflects.

21 This reflects all billed
22 claims by the month in which they were settled.

23 So, the total population of
24 claims that were billed -- 24,551 of them were
25 settled in that eighth month of 1998.

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1 Q Okay. With that amendment and that
2 understanding, let me reask my question.

3 So in August of 1998, the CCR
4 settled 24,551 claims, which were ultimately
5 billed to some CCR member; is that correct?

6 A That's correct.

7 Q And of the 24,500 claims that were
8 settled in August of 1998, Turner & Newall paid
9 a portion of the settlement in 9,637 of them; is
10 that correct?

11 A They were billed.

12 At some point T&N stopped
13 paying their bills.

14 I suspect they paid all of
15 this bill; but what this reflects is "billed,"
16 not "paid."

17 Q Okay. They were allocated an
18 obligation to pay 9,600 out of the 24,500 that
19 were settled.

20 Whether they ultimately paid
21 it or not, you don't know. At least they were
22 billed for that amount?

23 A That's what this document reflects,
24 yes.

25 Q Okay. And obviously, all of the

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1 claims settled during the 1998 to 2000 time
2 period were when CCR was operating under the
3 "named only" share allocation system; is that
4 correct?

5 A Yes; although even under the "named
6 only" share allocation system there were -- and
7 it's a very small number, but there were
8 occasional claims that were still settled under
9 shares that were not strictly "named only."

10 Q Okay. Is it fair to say that one of
11 the primary duties of your law firm, in its role
12 as special counsel to the CCR, was to assist and
13 make -- or assist and evaluate the
14 recommendations relating to the share
15 allocation?

16 A Yes.

17 Q In setting the share allocation
18 between and amongst the CCR members, I believe
19 you testified that one factor that went into
20 that allocation was the occupation of the
21 asbestos plaintiff; correct?

22 A Yes.

23 Q Was another factor the historical
24 settlement experience for the CCR members?

25 A Yes. I believe I testified to that.

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